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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/785,385
Filing Date: February 16, 2001
Appellant(s): JACOBUS, CHARLES J.

_____
John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/22/2008 appealing from the Office action mailed

10/22/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6138144	DeSimone et al	10-2000
US 5841980	Waters	11-1998
US 6015348	Lambright et al	1-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1>   Claims 1, 3-9, 11, and 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable

over DeSimone et al. (U.S. Patent Number 6,138,144), hereinafter referred to as DeSimone, in

view of Waters et al. (U.S. Patent Number 5,841,980), hereinafter referred to as Waters.

2>   DeSimone disclosed a multicast capable IP network maintaining client terminals on a

multimedia conference. In an analogous art, Waters disclosed a distributed communication

network for multi-user applications. Just as with DeSimone's invention, Waters discussed the

benefits of a multicast system and the usage of the Asynchronous Transfer Mode. See column 1,

lines 44-62.

3>   Concerning claims 1 and 11, DeSimone did not explicitly state that his system could

utilize message culling or traffic adjustment means to reduce communications between client

terminals and the cloud. However, Waters focuses on reducing the bandwidth loading of a

multi-user application operating over a communication network. See column 5, lines 6-32.

Waters's use of culling rules in this manner has been admitted by the applicant. See the

specification, page 7, last paragraph. Since the inventions encompass the same field of endeavor,

it would have been obvious to one of ordinary skill in the art at the time of the applicant's

invention to modify the system provided by DeSimone by adding the ability to implement

message culling for reduced client-cloud communications as provided by Waters. This would

make sense because it would provide a system such as DeSimone's with a more optimal

interaction among its multiple users. See column 4, line 65 through column 5, line 3. This

rationale also applies to those dependent claims utilizing the same combination.

4>   Concerning claim 17, DeSimone did not explicitly state the use of host platforms.

However, Waters's system does utilize host computers. Since the inventions encompass the

same field of endeavor, it would have been obvious to one of ordinary skill in the art at the time

of the applicant's invention to modify the system provided by DeSimone by adding the use of

host platforms as provided by Waters. This would make sense because it would allow for greater

flexibility in management of the client terminals.

5>   Thereby the combination of DeSimone and Waters discloses:

- <Claim 1>

    A distributed network computing environment, comprising:

    a plurality of clients communicating within a multicast cloud distributed network
    using content-specific date within messages to implement data routing and message
    culling in a groupware application (DeSimone, column 4, lines 47-54 and Waters,
    column 9, lines 59-63 and column 10, lines 11-67); and

    one or more network routing modules or router-embedded applets operative, in
    addition to normal packet-routing, to permit or inhibit the distribution of a particular
    message based upon the content of the message (DeSimone, column 4, lines 59-61 and
    column 5, lines 24-41).

- <Claim 3>

    The environment of claim 1, wherein the application is a client-selectable and
    controllable data service associated with the distribution of audio, video, or other digital
    signal streams (DeSimone, column 1, lines 26-34).

- <Claim 4>

    The environment of claim 1, wherein the clients enter, leave, and interact with the
    cloud through a lobby manager (DeSimone, column 5, lines 5-23).

- <Claim 5>

  The environment of claim 4, wherein the lobby manager is further operative to validate the application in terms of compatibility and download data to correct for deficiencies (DeSimone, column 7, line 59 through column 8, line 12).

- <Claim 6>

  The environment of claim 4, wherein the lobby manager is further operative to simultaneously support multiple clouds through multicast or replicated unicast protocols (DeSimone, column 3, lines 27-36).

- <Claim 7>

  The environment of claim 1, wherein the routing modules implement application-specific message culling to reduce client-cloud communications (Waters, column 9, lines 59-63).

- <Claim 8>

  The environment of claim 7, wherein the message culling includes message omission, rerouting, and other quality-of-service modifications (Waters, column 10, lines 36-50).

- <Claim 9>

  The environment of claim 7, wherein the application communicates internal state changes into the cloud through an API (DeSimone, column 2, lines 15-20).

- <Claim 11>

  A distributed network computing environment, comprising:

  a network-enabled client application (DeSimone, column 4, lines 47-54);

at least one lobby manager that facilitates communications between the client

application and a federation (DeSimone, column 5, lines 5-23); and

one or more network routing modules or router-embedded applets operative, in

addition to normal packet-routing, to permit or inhibit the distribution of a particular

message based upon the content of the message to reduce the communications with the

federation (DeSimone, column 4, lines 59-61 and column 5, lines 24-41 and Waters,

column 9, lines 59-63 and column 10, lines 11-67).

- <Claim 14>

The environment of claim 11, wherein the application is a client selectable and

controllable data service (DeSimone, column 1, lines 26-34).

- <Claim 15>

The environment of claim 14, wherein the data service includes audio, video, or

other type of digital signal feed (DeSimone, column 1, lines 26-34).

- <Claim 16>

The environment of claim 11, wherein the routing modules further support a

point-to-multipoint distributed communications model between clients (DeSimone,

column 5, lines 52-57).

- <Claim 17>

The environment of claim 11, wherein: at least some of the client applications run

on host platforms (Waters, column 17, lines 63-67); and the routing modules further

support conventional internet packet routing among the hosts (Waters, column 19, lines

7-9).

- <Claim 18>

    The environment of claim 11, wherein the routing modules further support one or more conventional multicast protocols (DeSimone, column 6, lines 26-29).

- <Claim 19>

    The environment of claim 11, wherein the application communicates internal state changes into the federation through an API (DeSimone, column 2, lines 15-20).

- <Claim 20>

    The environment of claim 11, wherein the message culling includes message omission, rerouting, and other quality-of-service modifications (Waters, column 10, lines 36-50).

- <Claim 21>

    The environment of claim 11, wherein the lobby manager is further operative to validate the client application for compatibility with the federation and download data to correct for deficiencies (DeSimone, column 7, line 59 through column 8, line 12).

- <Claim 22>

    The environment of claim 11, wherein the lobby manager is further operative to simultaneous process multiple federations (DeSimone, column 3, lines 27-36).

- <Claim 23>

    The environment of claim 22, wherein the federations communicate through multicast or replicated unicast protocols (DeSimone, column 3, lines 27-36).

6>   Since the combination of DeSimone and Waters discloses all of the above limitations,

claims 1, 3-9, 11, and 14-23 are rejected.

7>   Claims 2, 10, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

DeSimone in view of Waters, as applied above, further in view of Lambright et al. (U.S. Patent

Number 6,015,348), hereinafter referred to as Lambright.

8>   The combination of DeSimone and Waters disclosed a multicast capable IP network

maintaining client terminals on a multimedia conference where the bandwidth loading of a multi-

user application is reduced. In an analogous art, Lambright disclosed a distributed

communication network for implementing a multi-player computer game. Just as with the

inventions of DeSimone and Waters, Lambright focuses on a communication network for multi-

user applications.

9>   Concerning claims 2 and 10, the combination of DeSimone and Waters did not explicitly

state the use of an application which was a simulation or game, or a system which would involve

thousands of participants. However, Lambright does state that his multi-user application is a

game and that it can be implemented for thousands of participants. In these areas Lambright's

relation to the present application has been admitted by the applicant. See the specification, page

5, first paragraph. Further, since the inventions of DeSimone, Waters, and Lambright encompass

the same field of endeavor, it would have been obvious to one of ordinary skill in the art at the

time of the applicant's invention to modify the combination of DeSimone and Waters by adding

the use of an application which was a simulation or game and the ability to reach thousands of

participants as provided by Lambright. This would make sense because it would be an ideal

utilization of the network for a different purpose, specifically online gaming.

10>   Thereby, the combination of DeSimone, Waters, and Lambright discloses:

- <Claim 2>

    The environment of claim 1, wherein the application is a distributed simulation or

    game (Lambright, column 1, lines 14-21).

- <Claim 10>

    The environment of claim 1, wherein the application is a massive groupware

    application involving thousands of world-wide participants (Lambright, column 1, line 66

    through column 2, line 2).

- <Claim 12>

    The environment of claim 11, wherein the application is a distributed simulation

    (Lambright, column 1, lines 27-33).

- <Claim 13>

    The environment of claim 11, wherein the application is a game (Lambright,

    column 1, lines 14-21).

11>   Since the combination of DeSimone, Waters, and Lambright discloses all of the above

limitations, claims 2, 10, 12, and 13 are rejected.

(10) Response to Argument

I.   WITH RESPECT TO CLAIMS 1, 3-9, 11, AND 14-23, APPLICANT'S ARGUMENTS SHOULD NOT
      BE FOUND PERSUASIVE BECAUSE DESIMONE DISCLOSES DISTRIBUTING A PARTICULAR
      MESSAGE BASED UPON THE CONTENT WITHIN THE MESSAGE.

In a decision rendered on January 31, 2007 for the instant application, the Board of

Patent Appeals and Interferences determined that DeSimone taught the limitation of distributing

messages based upon the content (BPAI decision 5 – ""the media type...actually determines the

content"). The language at issue before the Board in that decision recited "applets operative to

distribute the messages based upon the content."

Applicant now argues that claim 1 contains new language that overcome the Board's

reasoning because claim 1 now recites "'*content-specific data within messages* to implement data

routing" (emphasis in original) (Br. 2) while claims 1 and 11 both recite "the ability to 'permit or

inhibit the distribution of a particular message *based upon the content of the message.*'"

(emphasis in original) (Br. 2-3). In Applicant's view, these new limitations "now make[s] it

clear that the 'content' is *data within the message*, and NOT 'media type'" (emphasis in original)

(Br. 3). However, Applicant's arguments should not be found persuasive because these new

limitations do not change the scope of the invention.

As reasoned by the Board, DeSimone's teaching of distributing packets based on media

type implied distributing packets based on the content of the message because "the media types

of DeSimone are the same as the claimed 'content' since the *type of media determines what is in*

the messages to be sent" (emphasis added) (BPAI decision 6) . Thus, the Board had already

interpreted "content" as referring to data that "is in the messages" when affirming that

DeSimone's media type read on Applicant's claimed content. Applicant's amendment to the

independent claims simply makes clear what was implied in the previous iteration of the claims. The amendment however does not substantively change the interpretation of the claims and therefore the reasoning applied in the Board's decision should apply with full force to Applicant's current claims.

Applicant additionally argues that DeSimone teaches away from the claimed invention because "it is the client and not data within the message that dictates what the client wants" (emphasis removed) (Br. 4). Applicant asserts that in DeSimone "the client decides how to interact in the conference, not the content of the messages" (emphasis removed) (Br. 4). Applicant's arguments fail to consider the knowledge available to one of ordinary skill in the art at the time of Applicant's invention.

One of ordinary skill in the art would understand that while a client in DeSimone chooses to receive a particular media type, it is the client's choice that tells the network elements which messages should be routed to the client. In other words, the routers and servers within the network route the packets based on the client's choice. It would have been obvious to one of ordinary skill in the art that the client's choice of media type simply informs routers and servers that comprise the network which packets to route to the client. This interpretation of DeSimone is echoed in Applicant's own specification. For example, Applicant discloses that a client supplies particular culling rules to applets in order to tell the applets which content should be distributed to them (Specification 13:3-8). Applicant's culling rules are used to distribute packets based on content (Specification 37:3-7). Thus, much like DeSimone, Applicant allows a client to specify the type of content to be distributed. And like DeSimone, the client's choice

(Applicant's culling rules) simply inform the network which type of content should be routed to

the client.

II.   WITH RESPECT TO CLAIM 4, APPLICANT'S ARGUMENTS SHOULD NOT BE FOUND PERSUASIVE
       BECAUSE DESIMONE DISCLOSES A LOBBY MANAGER AS CLAIMED.

       Applicant merely argues that DeSimone does not disclose the limitation "that clients

enter, leave, and interact with the cloud through a lobby manager" (Br. 4). Beyond merely

asserting that the cited section "says nothing about a 'lobby manager'", Applicant provides no

other support for the argument. Applicant's bare argument should not be found persuasive

because DeSimone's directory server reads on Applicant's lobby manager.

       First, in order to enter the multicast cloud, DeSimone discloses that the clients must first

utilize the directory server to submit user ID and password as IP address (DeSimone, Figure 3,

items 301-304). Second, in order to leave the multicast cloud, the clients returns the IP address

to the directory server for use by another user (Figure 3, item 309 | column 5, lines 17-21).

These actions constitute a client interacting with the multicast cloud. Since DeSimone teaches

that a client must enter and leave the cloud through the directory server, DeSimone's directory

server reads on the lobby manager as claimed.

III.   WITH RESPECT TO CLAIMS 2, 10, 12, AND 13, APPLICANT'S ARGUMENTS SHOULD NOT BE
       FOUND PERSUASIVE BECAUSE THE COMBINATION OF DESIMONE, WATERS, AND LAMBRIGHT
       DISCLOSE THE LIMITATIONS AS CLAIMED.

       Applicant essentially reiterates the same arguments that were made in the appeal brief

filed on October 13, 2005 (Br-2005 5). Applicant again inexplicably focuses on the concept of

fixed zones when it is evident that none of the claims are directed towards this feature. As

affirmed by the Board's decision in 2007, "the claims do no recite any features related to using

fixed zones" (BPAI decision 7). The current claims presented for the Board in this appeal are

identical to the claims that were decided upon in the previous decision. Therefore, the Board's

decision should apply with full force to these claims as well.

Applicant also seems to make an argument against the motivation to combine the

references. DeSimone is directed towards providing a system to allow multiple clients to

collaborate and interact with one another over a network (DeSimone column 1, lines 26-34).

Similarly, Lambright is directed towards providing a system to allow multiple clients to interact

with one another over a network (Lambright column 1, lines 15-40). Lambright however focuses

on providing such features in gaming applications. It would have been obvious to one of ordinary

skill in the art at the time of the applicant's invention to have reasonably inferred that

DeSimone's multi-user network application could have been implemented as a gaming

application because Lambright teaches a multi-user network gaming application.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Dohm Chankong/
Examiner, Art Unit 2152

Dated: June 20, 2008

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